IN THE COURT OF APPEALS OF THE STATE OF ALASKA

JEFFREY L. ARNOLD, Appellant, v. STATE OF ALASKA, Appellee.	Court of Appeals No. A-12859 Trial Court No. 4FA-13-02327 CI SUMMARY DISPOSITION No. 0067 — September 11, 2019

Appeal from the Superior Court, Fourth Judicial District, Fairbanks, Bethany S. Harbison, Judge.

Appearances: Fleur L. Roberts, Law Offices of Fleur L. Roberts, Fairbanks, for the Appellant. Patricia L. Haines, Assistant Attorney General, Office of Criminal Appeals, Anchorage, and Jahna Lindemuth, Attorney General, Juneau, for the Appellee.

Before: Allard, Chief Judge, Fabe, Senior Supreme Court Justice,[*] and Andrews, Senior Superior Court Judge.[*]

Jeffrey L. Arnold appeals the superior court's denial of his second application for post-conviction relief. In Arnold's first application for post-conviction

[*] Sitting by assignment made pursuant to Article IV, Section 11 of the Alaska Constitution and Administrative Rule 23(a).

relief, he challenged the constitutionality of a statute that made him ineligible for good time credit. The court denied that application and Arnold did not appeal.

In his second application for post-conviction relief, Arnold alleged that the attorney who represented him in his first application for post-conviction relief, David Seid, was ineffective because, according to Arnold, Seid failed to inform Arnold of his right to appeal the court's denial of his application.[1] The superior court held an evidentiary hearing to determine whether Seid had, in fact, informed Arnold of his right to appeal. Seid testified at the hearing that he was "reasonably confident" that he informed Arnold of his right to appeal and that, if Arnold had requested an appeal, he would have filed a notice of appeal. Based on Seid's testimony, the superior court found that Seid had informed Arnold of his right to appeal and that, after being informed of his right to appeal, Arnold never requested that an appeal be filed.

On appeal, Arnold argues that the superior court's factual findings were clearly erroneous. A court's factual findings are clearly erroneous when, after reviewing the entire record, we are "left with a definite and firm conviction that a mistake has been made."[2] After reviewing the record in this case, we conclude that the superior court did not clearly err in finding that Seid told Arnold of his right to appeal and that Arnold never requested that an appeal be filed.

Arnold also appears to argue that the superior court's factual findings were insufficient to support its legal conclusion that Seid was not ineffective. More specifically, Arnold argues that the superior court was also required to determine that Seid's explanation of the right to appeal was "comprehensible" and that Seid explained the procedures involved in pursuing an appeal. Arnold, however, never argued below

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[1] *Cf. Broeckel v. State*, 900 P.2d 1205 (Alaska App. 1995).

[2] *Ferguson v. State*, 242 P.3d 1042, 1051 (Alaska App. 2010).

that these specific findings were required, and he never objected to the superior court's characterization of the narrow question at issue in the evidentiary hearing as whether Arnold was informed by Seid that he had a right to appeal. We therefore see no error in the superior court's failure to raise the findings now requested by Arnold.[3]

Finally, we note that Arnold also appears to make various legal challenges to the superior court's ruling. After reviewing the briefs, however, it is clear that all of these arguments hinge on Arnold's underlying assertion that the superior court's factual findings were clearly erroneous. Because we conclude that those findings were not clearly erroneous, we need not reach Arnold's legal arguments.

The judgment of the superior court is AFFIRMED.

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[3] *See Hollstein v. State*, 175 P.3d 1288, 1290 (Alaska App. 2008) ("[A] litigant who wishes to raise an issue on appeal must show that the issue was adequately preserved in the lower court — which means not only that the litigant presented the issue to the lower court, but also that the lower court ruled on that issue.") (emphasis omitted).